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July 17, 2000

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Rosemary Center, Esq.
Office of the General Counsel
Kentucky Registry of Election Finance
140 Walnut Street
Frankfort, Kentucky 40601

RE: Request for Advisory Opinion

Dear Ms. Center:

This is a request for an Advisory Opinion, pursuant to KRS 121.135(1) and 32 KAR 2:060, concerning application of certain campaign finance statutes and/or regulations to the following issues:

ISSUE 1: Whether it is permissible to establish a independent expenditure committee since no statutory prohibition against such a committee is found in KRS Chapter 121.

ISSUE 2: Assuming that establishment of a independent expenditure committee is permissible, whether such a committee is constrained by the same filing and reporting requirements as other "committees" defined in KRS 121.015(3).

ISSUE 3: Assuming that establishment of a independent expenditure committee is permissible, whether there is a limitation to the amount that an individual may contribute to such a committee.

A. BACKGROUND

The undersigned attorney and law firm represents "a group of concerned citizens to be known as Citizens for a Better Lexington (hereinafter the "Group"). The Group is currently engaged in soliciting contributions, which will be utilized to advocate the election or defeat of specific candidates in upcoming elections. The Group intends to function on a continual basis, independent of any particular candidate, campaign committee or any person working on behalf of any of them.

B. DISCUSSION

1. ISSUE 1

Only five types of "committees" are defined in KRS 121.015(3). They are "campaign committee," "political issues committee," "permanent committee," "executive committee of a political party," and "inaugural committee." However, KRS Chapter 121 does not currently recognize, by definition, a independent expenditure committee, nor is the formation of an independent expenditure committee specifically prohibited.

Additionally, no prohibitory implication can be derived from the definition of "independent expenditure" set forth in KRS 121.015(12), as follows:

The expenditure of money or other things of value for a communication which expressly advocates the election or defeat of a clearly identified candidate or slate of candidates, and which is made without any coordination, consultation, or cooperation with any candidate, slate of candidates, campaign committee, or any authorized person acting on behalf of any of them, and which is not made in concert with, or at the request or suggestion of any candidate, slate of candidates, campaign committee, or any authorized person acting on behalf of any of them.

KRS 121.015(12).

It is the Group's intention to expend sums solely to advocate the election or defeat of specific candidates for public office, "without any coordination, consultation, or cooperation with any candidate, selective candidates, campaign committee, or any unauthorized person acting on behalf of them...." Therefore, the Group wishes to organize itself as a independent expenditure committee. The Group does not intend to make direct contributions to candidates. Clearly, no specific provision of KRS Chapter 121 facially prohibits the Group from establishing and operating such a committee.

2. ISSUE 2

Assuming that formation of a independent expenditure committee is permissible, it appears that the registration and reporting requirements set forth in KRS Chapter 121 will apply to such a committee although no specific definition of "independent expenditure committee" is contained within KRS Chapter 121.

Under KRS 121.170(1), the registration of "committees" is discussed as follows:

Any committee, except a federally-registered out-of-state permanent committee, *organized under any provisions of this chapter* shall register with the registry, by filing official notice of intention at the time of organization, giving names, addresses, and positions of the officers of the organization and designating the candidate or candidates, slate of candidates, or question it is organized to support or oppose on forms prescribed by the registry....

KRS 121.170(1) (emphasis added). Furthermore, the "committees" defined in KRS 121.015(3) are required to report independent expenditures when they exceed \$500 in the aggregate in any one election on a form provided by the Registry. KREF AO 95-0012 (citing KRS 121.150(1) and indirectly interpreting "person" to encompass "committee"). "[A] representative from the committee" is required to "sign a sworn statement that the expenditure was an independent expenditure and no prior communication was made with the campaign concerning the expenditure." *Id.*

The intent and function of the campaign finance legislation favors disclosure of independent expenditures. Thus, although a independent expenditure committee is not specifically defined in KRS 121.015, it nevertheless appears that such a committee is still required to register and file reports with the Registry.

3. ISSUE 3:

The Registry has opined that "[a]n individual or group may expend unlimited amounts toward the election of candidates because such expenditures, if independent of the candidate, are constitutionally protected under the First Amendment to the U.S. Constitution." KREF AO 95-012 (citing Buckley v. Valeo, 424 U.S.1 (1976)). The issue becomes whether there is a limitation as to the dollar amount that an individual may contribute to a independent expenditure committee.

Pursuant to KRS 121.150(6), "[n]o candidate, campaign committee, political issues committee, or anyone acting on their behalf, [is permitted] to accept a contribution of more than one thousand dollars (\$1,000.00), from any person, permanent committee, or contributing organization in any one (1) election...." The Registry has opined that this particular legislation is controlling in the case of a campaign committee making expenditures in coordination with candidates in addition to independent expenditures. See KREF AO 95-012. However, in light of the U.S. Supreme Court's holding in Buckley, KRS 121.150(6) should not apply to the Group,

functioning solely as a independent expenditure committee. The Group will be accepting contributions all of which are to be expended with no coordination with a specific candidate, that candidate's committee, or any person acting on behalf of any of them.

Therefore, to permit an individual or group to make unlimited independent expenditures but simultaneously prohibit that same individual from contributing more than \$1,000.00 to the Group, which will perform the same function, is contrary to the Court's holding in Buckley. Thus, there should be no limitation on contribution amounts from individuals to the Group.

Furthermore, KRS 121.150 pertaining to campaign contribution restrictions, specifically states as follows:

Any person making an independent expenditure, shall report these expenditures when the expenditures by that person exceed five hundred dollars (\$500.00) in the aggregate in any one (1) election, on a form provided by the Registry and shall sign a statement on the form, under penalty of perjury, that the expenditure was an actual independent expenditure and that there was no prior communication with the campaign on whose behalf it was made.

Notwithstanding, individuals should not be required to comply with KRS 121.150(1) when making contributions to the Group operating as a independent expenditure committee. The reporting obligation should fall squarely with the Group and not with the individual.

Hence, there should be no limitation on the amount that an individual may contribute to the Group and the individual should be relieved of the reporting obligation mandated by KRS 121.150(1).

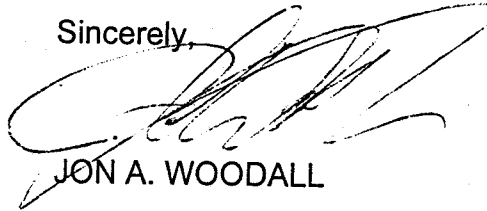
CONCLUSION

KRS Chapter 121 and the regulations authorized thereunder are completely devoid of any prohibition whatsoever concerning the formation and operation of a independent expenditures committee. The current statutory scheme clearly does not prohibit formation of such a committee. The reporting registration requirements applicable to those committees defined in KRS Chapter 121 appear to be applicable to a independent expenditure committee. However, consistent with United States Supreme Court precedent, individuals should not be limited in the amount that may be contributed to the Group, which will operate as a independent expenditure committee. Furthermore, individuals should not be required to report contributions as the reporting obligation should rest with the Group.

McBRAYER, MCGINNIS, LESLIE & KIRKLAND PLLC

I respectfully request to reserve the right to submit additional comments pursuant to 32 KAR 32:200 Section 3, and to appear before the Registry at the meeting where the Advisory Opinion is scheduled to be discussed and voted upon.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon A. Woodall", written over the word "Sincerely,".

JON A. WOODALL

Jaw\home builders\registry\center ltr